

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BLAIR DOUGLASS,

Plaintiff,

v.

OPTAVIA LLC,

Defendant.

2:22-CV-00594-CCW

**ORDER GRANTING PLAINTIFF'S MOTION TO CERTIFY THE CLASS FOR
SETTLEMENT PURPOSES AND FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

WHEREAS, the Parties in the above-captioned litigation have advised the Court that they have settled the litigation, the terms of which have been memorialized in a proposed settlement agreement (“Settlement Agreement”);

WHEREAS, Plaintiff has applied to this Court through an unopposed motion for an order (1) granting preliminary approval of the Settlement Agreement resolving all claims in the above-captioned matter, (2) directing notice to the class, and (3) setting a fairness hearing; and

WHEREAS, the Court has read and considered Plaintiff's unopposed Motion to Certify the Class for Settlement Purposes and for Preliminary Approval of Class Action Settlement (“Motion”), the points and authorities and exhibits submitted therewith, the Settlement Agreement, and all of the supporting documents; and good cause appearing:

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms defined therein shall have the same meaning in this Order as set forth in the Settlement Agreement.

2. Plaintiff's Motion is GRANTED. It appears to this Court on a preliminary basis that the Settlement Agreement satisfies the elements of Fed. R. Civ. P. 23 and is fair, adequate, and reasonable.

3. The proposed Settlement Class is hereby preliminarily certified pursuant to Fed. R. Civ. P. 23(a) and (b)(2) for purposes of settlement. The Settlement Class is defined as:

[A] national class including all Blind or Visually Disabled individuals who use screen reader auxiliary aids to navigate digital content and who have accessed, attempted to access, or been deterred from attempting to access, or who may access, attempt to access, or be deterred from attempting to access, the Website from the United States.

4. The Court finds that Plaintiff Blair Douglass will fairly and adequately protect the interests of the Settlement Class. As a result, the Court appoints and designates Mr. Douglass as representative of the Settlement Class.

5. The Court finds that attorneys Kevin Tucker and Kevin Abramowicz of the law firm of East End Trial Group LLC are experienced and competent counsel who will continue to fairly and adequately protect the interests of the Settlement Class. As a result, the Court appoints and designates attorneys Tucker and Abramowicz as Class Counsel for the Settlement Class.

6. The Court finds that the Long-Form Notice attached to the Settlement Agreement as Agreement Exhibit 1 and the Notice Plan attached to the pending motion as Exhibit 2 meet the requirements for due process, the requirements of Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, and ensure Notice is well calculated to reach representative class members. The Notice and Notice Plan are hereby approved.

7. As soon as practicable, but no later than twenty-one (21) days after the Court's entry of a Preliminary Approval order, Optavia shall, at its expense:

(a) Cause the Long-Form Notice accompanying the Settlement Agreement as Agreement Exhibit 1 to be published on, and make the following documents filed in the Lawsuit available for download on, the Settlement Website, located at <https://www.optaviaADAsettlement.com>:¹

- i. the class action complaint;
- ii. Plaintiff's motion to certify class for settlement purposes and for preliminary approval of class action settlement, and supporting documents; and
- iii. the Court's preliminary approval orders, as well as any supporting memorandum.

(b) Add an invisible link at the beginning of Defendant's Website, located at <https://www.optavia.com>, that directs visitors using screen reader auxiliary aids to the Settlement Website. The link shall include alternative text which reads "Click to view our ADA class action settlement notice regarding the accessibility of our website."

(c) Post a link to the Settlement Website on Optavia's social media accounts, including <https://www.facebook.com/OPTAVIA>, <https://www.instagram.com/OPTAVIA/>, and https://twitter.com/OPTAVIA_tweets. The post shall be in a form and substance of the language provided immediately below (it is agreed and understood that the exact language is subject to change) and shall tag and direct questions about the stipulated class action settlement notice to Class Counsel at their accounts on each respective platform.

OPTAVIA is committed to making all of our digital content accessible to our Coach and Client Community. OPTAVIA has entered into a Class Action settlement

¹ The Settlement Website and the documents identified in Section 1(a) shall be fully accessible by individuals who screen reader auxiliary aids.

whereby it is committing to ADA compliance of its website to ensure that it is accessible to all those seeking Lifelong Transformation, One Healthy Habit at a Time. Please visit <https://www.optaviaADAsettlement.com> to learn more about Optavia's agreement to make its digital content accessible to screen reader users. Have questions? Contact East End Trial Group at [<https://www.facebook.com/EastEndTrialGroup/> or <https://www.instagram.com/eastendtrialgroup/> or <https://twitter.com/eastendtrial>].

8. As soon as practicable, but no later than twenty-one (21) days after the Court's entry of a Preliminary Approval order, Class Counsel shall, at its expense, request that at least the following organizations publish notice in the form provided immediately below in their respective electronic newsletters and social media accounts such that the notice is sent out within sixty (60) days of Preliminary Approval: Achieva, American Council of the Blind, American Foundation for the Blind, Blinded American Veterans Foundation, Blinded Veterans Association, Foundation Fighting Blindness, Guide Dogs for the Blind, National Association of Blind Merchants, National Council on Disability, and National Federation of the Blind.

A proposed settlement has been reached that would resolve the class action lawsuit *Douglass v. Optavia LLC*, Case No. 2:22-cv-00594-CCW (W.D. Pa.). The lawsuit alleges that Optavia LLC violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*, by failing to take the necessary steps to ensure its website does not discriminate against blind or visually disabled consumers who use screen reader auxiliary aids to access digital content. Under the settlement, Optavia LLC agrees to make its website, mobile app, and any new website or mobile app it develops or acquires accessible to screen reader users. For a more complete summary of the terms of the proposed settlement, please visit <https://www.optaviaADAsettlement.com> or contact Class Counsel at <https://eastendtrialgroup.com>.

9. No less than five (5) days before the fairness hearing scheduled in the Lawsuit, Optavia shall file a declaration from the stipulated class action settlement administrator that summarizes the work the administrator performed and the number of visitors to the Settlement Website.

10. Within forty-five (45) days of this Order, Plaintiff shall move for reasonable attorneys' fees and costs.

11. Within sixty (60) days of this Order, Defendant or Defendant's counsel shall file a declaration evidencing Defendant's compliance with this Order.

12. Within sixty (60) days of this Order, Class Counsel shall file a declaration evidencing its compliance with this Order.

13. Within eighty-one (81) days of this Order, which is sixty (60) days after the Notice Deadline defined above, any Settlement Class Member may object to the Settlement Agreement by filing written objections with the Clerk of the Court ("Objection Deadline"). Only such objecting Settlement Class Members shall have the right, and only if they expressly seek it in their objection, to present objections orally at the Fairness Hearing.

14. Within eighty-eight (88) days of this Order, which is seven (7) days after the Objection Deadline defined above, Plaintiff shall respond to any timely-filed objections.

15. A hearing (the "Fairness Hearing") shall be held before this Court on **December 15, 2022 at 10:00 A.M. EST** in the United States District Court for the Western District of Pennsylvania, located at Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Courtroom 9B, Pittsburgh, PA 15219, to determine whether the Settlement Agreement shall be granted final approval, and to address any related matters. **On or December 1, 2022, Plaintiff shall file his motion for final approval of the settlement as to the Settlement Class.**

16. The Fairness Hearing may, from time to time and without further notice to the Settlement Class members (except those who have filed timely objections or entered appearances), be continued or adjourned by order of the Court.

17. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement Agreement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

IT IS SO ORDERED.

DATED this 14th day of September, 2022.

BY THE COURT:

/s/ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
United States District Judge

cc (via ECF email notification):

All Counsel of Record